

## WATER COUNCIL MEETING

Dept. of Environmental Services  
29 Hazen Dr., Concord, N.H.

February 9, 2005  
9:00 a.m.

**Members present:** Councilors Bridges, Bradley, Butler, Densberger, DiMarzio, Glines, Lyons, and Phillips

**Members absent:** Councilors Barrett, Cowan, Dupee, Frost, Ingham, Lussier, Patenaude and Varotsis

Chairman Bridges opened the meeting at 9:00 a.m.

**1. Approval of Minutes of January 12, 2005 Meeting**

*A motion was made by Councilor Bradley to accept the minutes of the January 12, 2005 meeting as presented. The motion was seconded by Councilor Densberger and unanimously voted.*

**2. Status of Appeals**

Michael Sclafani distributed an Appeals Status Report and reviewed pending appeals with the council.

- **Docket No. 03-10 WC - Appeal of Conservation Law Foundation**  
A stay remains in effect on this appeal.
- **Docket No. 03-14 WC - Appeal of Gerald A. Bell**  
A stay remains in effect on this appeal pending the resolution of a declaratory judgment action before the Merrimack County Superior Court.
- **Docket No. 04-05 WC - Appeal of Freudenberg-NOK General Partnership**  
A second pre-hearing conference has been scheduled for February 14, 2005 at 9:00 a.m.
- **Docket No. 04-15 WC - Appeal of Town of Nottingham Selectmen**  
On January 13, 2005, a written Decision & Order declining to accept the appeal was issued. On November 5, 2004, two months prior to the issuance of the Decision & Order, the appellant filed a Motion for Reconsideration, which the council voted to table until the issuance of the D&O.  
  
*Councilor Densberger made a motion to deny appellant's Motion for Reconsideration. Councilor Bradley seconded the motion and it was unanimously voted.*
- **Docket No. 04-17 WC - Appeal of Save Our Groundwater "SOG"**  
On January 13, 2005, a written Decision & Order declining to accept the appeal was issued.

- **Docket No. 04-18 WC - Appeal of Thaddeus Dymon**  
A stay remains in effect pending the resolution of a boundary dispute in Superior Court.
- **Docket No. 04-19 WC - Appeal of Town of Newport**  
See Docket No. 04-18 above.
- **Docket No. 04-22 WC - Appeal of Robert Chapman and Chapman Scrap Metal Recycling**  
A pre-hearing conference is scheduled for February 28, 2005 at 9:00 a.m.
- **Docket No. 05-01 WC - Appeal of PSNH**  
This appeal of Water Quality Certificate #2003-006 dated December 16, 2004 was filed on January 18, 2005.

***Councilor DiMarzio made a motion to accept the appeal. Councilor Butler seconded the motion and it was unanimously voted.***

Councilor DiMarzio will schedule and preside at a pre-hearing conference.

### **3. Proposed Rules**

#### **Env-Ws 401 - State Surface Water Discharge Permits:**

George Berlandi, P.E., Wastewater Engineering Bureau, discussed the proposed rules which expire on June 28, 2005. The rules were amended to streamline the process for those facilities which require only a state discharge permit but not a federal NHDES permit.

***Councilor Butler made a motion to approve the rules as presented and to authorize the bureau to continue with the rulemaking process. Councilor Bradley seconded the motion and it was unanimously voted.***

#### **Env-Ws 300-309 and Env-Ws 340-349 - NH Drinking Water Rules**

Sarah Pillsbury, P.G., Administrator of the Water Supply Engineering Bureau, presented the proposed drinking water rules which expire in June 2005. Only minor changes to the rules were made.

***Councilor Densberger made a motion to approve the rules as presented and to authorize the bureau to continue with the rulemaking process. Councilor Phillips seconded the motion and it was unanimously voted.***

### **4. NH Dam Safety Program**

Jim Gallagher, P.E., Chief of the Dam Bureau, Water Division, discussed the New Hampshire Dam Safety Program and current legislation related to dam maintenance funding.

The Dam Bureau is responsible for ensuring the safety of 3,300 dams in the State of New Hampshire, approximately one-third of which are classified as high, significant or low hazard dams. In the event of failure of one of these dams, there would likely be loss of life, significant property loss or other economic losses. The Dam Bureau also has daily operational responsibility for over 200 dams, 29 of which are high hazard dams and 53 are significant hazard dams. An emergency action plan has

been developed for these dams which includes a computer model of the impact of a dam failure. Five to six major rehabilitation projects are completed by the Dam Bureau each year.

The Dam Bureau also reviews all plans and specifications for construction of any dam in the state. The bureau is in the process of revising its rules to allow small, non-hazardous structures to be reviewed by the DES Site Specific Section. The rules revision will also include a new chapter on dam removals, a program established about four years ago to assist dam owners with the regulatory process in removing unwanted dams.

Dam operations, maintenance, repair and reconstruction are all funded out of the dam maintenance fund. The sole revenue source of that fund is from private hydropower operators who lease state-owned dams and then sell power to a third party, primarily PSNH. As part of the electric utility restructuring act passed by the legislature a couple years ago, PSNH was required to renegotiate power purchase agreements with the hydropower operators. As a result, it created about a 40% drop in revenue to the dam maintenance fund.

The legislature formed a study committee to look at alternative funding sources. One recommendation was to use a portion of the unrefunded gas tax, which carries a balance of approximately \$1,600,000 to \$1,700,000 each year. Currently, one half of the fund goes to F&G and the other half goes into the general fund. Another alternative is to establish a shoreland maintenance fee of 10 cents per linear foot of shorefront on lakes and ponds where the water level is regulated by a state-owned dam. There is approximately 5.8 million feet of shorefront property, which would generate \$580,000. There is a provision in the bill that municipalities would be responsible for collecting the money, for which the municipality would receive 5%.

In response to questions about the definition of the natural mean highwater mark, Mr. Gallagher explained that the natural mean highwater mark is determined by a natural physical spot on a bank where there is a change in vegetation, shelving, or some other indication that the water has remained at a level long enough to have created a mark.

## **5. Legislative Update**

Harry Stewart, P.E., Water Division Director, reviewed pending legislation being tracked by DES.

HB 45 allows municipalities to combine water and sewer departments. This is not considered good practice but gives municipalities that flexibility.

HB 59 sets a 2010 date for municipalities to have in place septage disposal agreements. DES has concerns with this bill since a municipality would lose all state funding if an agreement is not reached by 2010.

HB 69 - relative to property rights and large groundwater withdrawals - the original version gave municipalities veto power over the state for large groundwater withdrawal permits. Amendments to require a second public hearing and other modifications are being discussed.

HB 135 establishes a committee to study funding sources for the state lab and to make rates more competitive with the private sector.

HB 148 transfers the estuaries project to UNH. DES supports this bill.

HB 189 establishes an international trade commission - this bill is somewhat related to large groundwater withdrawals for bottled water. There were concerns that state regulations would not control exports if WTO or NAFTA were involved, which the AG refutes. DES is not opposed to this bill.

HB 215 gives authority for the existing groundwater registration process and requires more accurate water use measurements.

HB 279 classifies Spofford Lake from Class B to Class A. Historically, Class A is a watersupply classification.

HB 318 requires that a municipality hook up property owners to a public water system if a water main crosses in front of their property.

HB 319 requires DES to arbitrate certain disputes related to environmental matters between municipalities. DES is opposed to this bill.

HB 386 defines commercial fertilizers and agriculture compost under the sludge program. DES supports this bill.

HB 432 makes funds available for a septage treatment facility grant program. A couple years ago, the onsite wastewater fee was increased by \$10 to create a septage coordinator position at DES. Funding for that position has been since transferred to other wastewater accounts.

HB 457 clarifies that stormwater retention basins that are artificially constructed are exempt from requiring a wetlands permit for maintenance activities.

HB 487 formally establishes DES's VLAP program and enables DES to accept donations to fund it.

HB 560 - relative to timber harvesting - adds to the notice of intent to cut a certification that the person is aware of the wetlands rules.

HB 565 provides money from the general fund to demolish the building at the DES owned pump station on Winnisquam Lake to provide boat access.

HB 572 grants regional water districts the power of eminent domain.

HB 625 allows WRBP to apply for and receive state revolving fund loans up to \$3 million to upgrade its sludge processing equipment.

HB 632 creates an environmental policy for New Hampshire.

HB 655 increases boat registration fees for public access initiatives and exotic weed control.

SB 25 - discussed by J. Gallagher.

SB 80 gives Emerald Lake District authority to protect groundwater.

SB 83 establishes a commission to study the CSPA.

SB 103 - discussed by J. Gallagher.

SB 104 removes landfills from the tax exemption statute.

SB 140 develops authority for in lieu fee payments for wetlands mitigation. The money would be used to create new wetlands, restore damaged wetlands or preserve land by conservation easement.

SB 142 extends the large groundwater study commission.

## **6. Other Business**

Chairman Bridges stated that he had contacted the Attorney General's office and discussed the council's concerns about having counsel available at appeal hearings. Vice Chairman DiMarzio will follow up with the Attorney General's Office.

## **7. Next Meeting**

The next meeting will be held on March 9, 2005.

**8. Adjournment**

***Councilor Bradley made a motion to adjourn, Councilor Butler seconded the motion and it was unanimously voted.***

The meeting adjourned at approximately 10:00 a.m.